



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

MAR 20 2017

Bridget K. O'Connor, Esq.
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RE: MUR 7221
Mepco Holdings, LLC
Mepco, LLC

Dear Ms. O'Connor:

On November 17, 2013, your clients, Mepco Holdings, LLC and Longview Intermediate Holdings C, LLC, filed a *sua sponte* submission to the Federal Election Commission relating to possible violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

Upon review of the available information, the Commission, on March 7, 2017, found that there is reason to believe that Mepco Holdings, LLC and Mepco, LLC violated 52 U.S.C. §§ 30116 and 30122 (formerly 2 U.S.C. §§ 441a(a) and 441f). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of this matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend

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that pre-probable cause conciliation not be entered into in order to complete its investigation of this matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the Respondents. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Nicholas Mueller, the attorney assigned to this matter, at (202) 694-1577 or nmueller@fec.gov.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Mepco Holdings, LLC
6 Mepco, LLC

MUR 7221

7
8 **I. INTRODUCTION**

9 Mepco Holdings, LLC ("Mepco") and its parent company, Longview Intermediate
10 Holdings C, LLC ("Longview") filed a *sua sponte* submission ("Submission"), notifying the
11 Commission that James Laurita, the former Mepco Chief Executive Officer ("CEO"), caused
12 Mepco to reimburse him and eight other executives for federal and state contributions made in
13 the names of the executives and their spouses.¹

14 Records produced by Mepco and disclosure reports filed with the Commission indicate
15 that between 2010 and 2013, a number of Mepco executives were reimbursed for federal
16 political contributions in an amount potentially exceeding \$600,000. Accordingly, the
17 Commission finds reason to believe that Mepco Holdings, LLC and Mepco, LLC violated 52
18 U.S.C. § 30122 (formerly 2 U.S.C. § 441f) by making contributions in the name of another.
19 Further, the Commission finds reason to believe that Mepco Holdings, LLC and Mepco, LLC
20 violated 52 U.S.C. § 30116(a)(1) (formerly 2 U.S.C. § 441a(a)(1)) by making excessive
21 contributions.

¹ Submission of Mepco Holdings, LLC and Longview Intermediate Holdings C, LLC at 4 (Nov. 17, 2013) ("Submission").

II. FACTUAL BACKGROUND

A. Respondents

Mepco is a holding company that owns and operates numerous coal-related businesses, including Mepco, LLC.² Mepco has been managed by three generations of the Laurita family, including James Laurita, Jr., who was the President and Chief Executive Officer of both Mepco and Mepco, LLC, until he resigned in November 2013.³ Mepco is a subsidiary of Longview, which owns another subsidiary, Longview Power, LLC ("Longview Power"), which operates a coal-fired power facility.⁴ Mepco provides Longview Power with coal to operate its power facility.⁵ Longview owns a 92.2% interest in Mepco with Laurita owning the remaining 7.8%.⁶ Mepco and Longview filed petitions for Chapter 11 bankruptcy petition in August 2013.⁷ Neither Mepco nor any of its subsidiaries, which are also LLCs, elected to be taxed as corporations under the Internal Revenue Code.

The other executives who received reimbursements for contributions include five individuals who are currently employed by Mepco: (1) Karen Hughes, Secretary and Treasurer, Mepco; (2) R. Kevin O'Dell, Vice President of Human Resources and Safety, Mepco, LLC; (3) Brian M. Osborn, Vice President of Engineering, Mepco, LLC; (4) Steven B. Polce, Vice President of Dana Mining for West Virginia, a subsidiary of Mepco; and (5) Richard R. Usery, Vice President — Coal Sales and Surface Operations, Mepco, LLC.⁸ Three other individuals,

² Submission at 2.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See Voluntary Petition, *In re: Mepco Holdings, LLC*, Case No. 13:12219 (D. Del. Aug. 30, 2013) at 25 ("Mepco Bankr. Pet.").

⁷ *Id.*; Submission at 2. The ultimate parent entity of Longview and Mepco is GenPower Holdings GP ("GenPower GP"), which is not a debtor in the bankruptcy proceeding. See Mepco Bankr. Pet. at 25.

⁸ Submission at 4.

1 who no longer work for Mepco, also appeared to have participated in the reimbursement
2 program: Eric Grimm, the former Vice President of Dana Mining;⁹ Kent Lindsay, the former
3 Chief Financial Officer (“CFO”) of Mepco and Mepco, LLC; and Christopher Stecher, the
4 former CFO and Manager of Accounting of Mepco.¹⁰

5 **B. Mepco’s Reimbursement of Political Contributions to Federal Candidates**
6 **from 2010 through 2013**
7

8 According to the Submission, after the 2008 election, Mepco’s officers decided that the
9 company should become more politically active by making contributions to federal and state
10 candidates who were likely to support the coal industry.¹¹ On March 4, 2010, Laurita requested
11 that eight Mepco officers, who included Karen Hughes, Kent Lindsay, Rick Usery, Eric Grimm,
12 Steve Polce, Kevin O’Dell, Brian Osborn, and Christopher Stecher, attend a meeting the next day
13 to discuss elections and support for particular candidates.¹² As a follow-up to the March 5
14 meeting, Laurita sent another e-mail asking those officers that they make contributions in
15 specific dollar amounts to four candidates, three of whom were federal candidates running for
16 seats in the House of Representatives: Mike Oliverio, David McKinley, and Sarah Minear.
17 Laurita also suggested contribution amounts.¹³ At Laurita’s request, Mepco began reimbursing
18 executives for political contributions on March 9, 2010.¹⁴ According to Mepco LLC’s payroll
19 records, on that date, Osborn, Hughes, Polce, O’Dell, Usery, Grimm, Stecher, and Lindsay all

⁹ *Id.* Grimm left Mepco on November 29, 2013. Supplemental Submission of Mepco (Mar. 18, 2014) (“Supp. Submission”) at 3.

¹⁰ Stecher served as CFO from February 2006 to July 2009, and Lindsay served as CFO from July 2009 until October 2012. *Id.*

¹¹ See Supp. Submission at 3.

¹² E-mail from James Laurita to Karen Hughes, *et al.* (Mar. 4, 2010 12:05 pm) (Mepco_00000281).

¹³ *Id.*

¹⁴ See Supp. Submission at 3.

1 received a \$20,000 bonus.¹⁵ Based on an e-mail string from March 2010, it appears that Mepco
2 awarded these bonuses so that officers could make political contributions to state and federal
3 candidates. On March 9, 2010, O'Dell forwarded Laurita's e-mails to his spouse, Dawn O'Dell,
4 and instructed her to make contributions per Laurita's request and that she should use funds from
5 an after-tax deposit of \$11,456, which appears to correspond to the pre-tax \$20,000 March 9
6 bonus from Mepco, LLC.¹⁶

7 From March 2010 through March 2013, Mepco continued to provide its executives with
8 bonus payments to be used for political contributions.¹⁷ As the Submission and Commission
9 disclosure reports indicate, Laurita and the eight other Mepco officers involved in the
10 reimbursement program contributed over \$600,000 to federal candidates between 2010 and
11 2013, and as further described below, most if not all of these contributions appear to have been
12 reimbursed.¹⁸

13 Table 1. — Reimbursed Contributions Between 2010 and 2013 by Recipient

Committee	Amount
Citizens for Altmire	\$35,300.00
Capito for Congress	\$11,500.00
Capito for West Virginia	\$34,800.00
Mark Critz for Congress	\$86,400.00
Manchin for West Virginia	\$76,300.00
Spike Maynard for Congress	\$12,800.00
McKinley for Congress	\$113,700.00
Minear for Congress	\$6,000.00
Tim Murphy for Congress	\$3,750.00

¹⁵ See 2010 Mepco LLC Payroll Records.

¹⁶ E-mail from Kevin O'Dell to Dawn O'Dell (Mar. 9, 2010 2:38 pm) (Mepco_00000279).

¹⁷ See Supp. Submission at 3; Mepco Combined Contribution Chart, Attach. A. The Commission notes that Laurita made two contributions in 2009 to Citizens for Altmire (\$2,500) and Capito for Congress (\$1,000) and was reimbursed for these contributions in late 2012, but the company-wide scheme involving reimbursement of the contributions of other executives apparently did not begin until March 2010.

¹⁸ The Commission uses "reimburse" generally to describe both advances and subsequent repayments for contributions.

Oliverio for Congress	\$84,400.00
Tom Smith for Senate	\$17,500.00
Snuffer for Congress	\$19,193.52
Griffith for Congress	\$1,000.00
Keadle for Congress	\$5,000.00
Mike Kelly for Congress	\$1,000.00
McConnell for Senate 2014	\$2,500.00
Romney Victory, Inc.	\$50,000.00
NRCC	\$40,400.00
West Virginia Republican Party	\$30,000.00
Total:	\$631,543.52

1
2 Mepco states that the manner in which it reimbursed its executives varied.¹⁹ Laurita
3 would at times identify candidates friendly to the coal industry and request or “instruct,” either
4 orally or in writing, that company officers, along with their spouses, make contributions to those
5 candidates.²⁰ In other instances, executives made candidate recommendations to Laurita.²¹
6 Executives stated that on occasion they would discuss political candidates at monthly
7 management meetings or in other group settings.²²

8 When not personally soliciting contributions, Laurita frequently relied on either Hughes,
9 who handled administrative tasks related to Mepco’s finances and payroll, or his assistant,
10 Suzanne Crane (née Likins), to convey his requests.²³ Hughes and Crane communicated with
11 executives both orally and in writing, indicating which candidates should receive contributions

¹⁹ Supp. Submission at 4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*; see also E-mail from James Laurita to Suzanne Crane (Mar. 6, 2013 1:42 pm) (MEPCO_00000071) (requesting that each officer and his or her spouse contribute \$2,500); E-mail from James Laurita to Karen Hughes (Sept. 13, 2012 4:50 am) (MEPCO_00000982-983) (“Karen, I forgot about this fund raiser. Will need \$1,000 from each officer.”); E-mail from James Laurita to Suzanne Crane (Mar. 6, 2013 1:46 pm) (MEPCO_00000792) (“Ask the officers to contribute \$2,500 x 2 here too”); E-mail from Karen Hughes to Brian Osborn and Eric Grimm (Sept. 28, 2010) (MEPCO_00000197) (“Are you making a donation as suggested so I can add it to your reimbursement?”).

1 and in what amount.²⁴ Often accompanying their requests were contribution forms for specific
2 candidates or fundraising events.²⁵

3 Once the officers received the requests, they or their spouses would make contributions
4 online or by check.²⁶ Typically, the executives provided checks to Hughes instead of submitting
5 them directly to a campaign or candidate.²⁷

6 At Laurita's request, Hughes and staff in the payroll department would arrange for
7 officers to receive reimbursement through "bonuses" paid through Mepco's payroll system.²⁸
8 Hughes maintained extensive charts that reflected contributions made by each executive and the
9 payment of reimbursements.²⁹ Specifically, payroll records indicate that funds used for
10 reimbursements came from Mepco's wholly owned subsidiary, Mepco LLC.³⁰ The method and
11 amounts of the reimbursements varied, and the payments were not made at regular intervals.³¹
12 The timing of the "bonuses" also varied in that executives received compensation for
13 contributions either before or after making them.³² Sometimes, reimbursements were tied to

²⁴ Supp. Submission at 4; *see also* E-mail from Karen Hughes to Kent Lindsay, *et al.* (Sept. 8, 2010 12:07 pm) (MEPCO_00003986) ("By the end of the day tomorrow (Thursday), please provide your check in the amount of \$500 payable to 'Capito for Congress.'").

²⁵ Supp. Submission at 4; *see also* E-mail from Suzanne Likins to Eric Grimm, *et al.* (Sept. 19, 2012 3:01 pm) (MEPCO_00005220-221).

²⁶ Supp. Submission at 5.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Supp. Submission at 4; *see also* E-mail from Karen Hughes to Rodney Bolyard (Nov. 16, 2012 1:05 pm), MEPCO_00000131-132 (reflecting candidate contributions and payment of reimbursements from 2010-2012).

³⁰ *See* 2010-2013 Mepco Payroll Records..

³¹ Supp. Submission at 4.

³² *Id.* Compare E-mail from Karen Hughes to Kevin O'Dell (Oct. 4, 2010 12:04pm) (MEPCO 00000177) ("The yellow highlights are those donations I have not yet received from you. If you intend to make those donations, please fill in the amount and return to me. I plan to make reimbursements to hit your bank on Wednesday."), with E-mail from Karen Hughes to Kevin O'Dell (Sept. 20, 2011 10:41 am) (MEPCO_00000257) ("You have \$7,056 in your account that is not yours. Save for future contributions.").

1 specific contributions made to a particular campaign.³³ In other instances, executives received
2 lump sum payments deposited into their accounts from which they were to make contributions.³⁴
3 And still in others, Hughes would simply ask executives to provide a list of contributions they
4 had already made, so she could reimburse them accordingly.³⁵

5 In many instances, executives contributed through campaign fundraisers hosted by
6 Laurita,³⁶ who often used company resources to hold them.³⁷ Frequently, Laurita's assistant,
7 Suzanne Crane, assisted Laurita with planning these fundraisers and sending out invitations as
8 well as working directly with the candidates' campaigns.³⁸

9 Laurita and his wife made over \$250,000 in federal contributions between 2009 and
10 2012, and it does not appear that Laurita received reimbursement for those contributions until the

³³ Supp. Submission at 4; E-mail from Karen Hughes to Brian Osborn and Eric Grimm (Sept. 28, 2010 9:10 am) (MEPCO_00000197) (asking whether Osborn or Grimm planned on making a "donation" to attend fundraiser for Congressman David McKinley so that funds could be added to their "reimbursements").

³⁴ Supp. Submission at 4; E-mail from Kevin O'Dell to Dawn O'Dell (Mar. 9, 2010 2:38 pm) (Mepco_00000279) ("The after tax deposit was \$11,456. We will pay out \$6,800 in the Primary and use the rest in the general later this year. We will have \$4,658 in our account for a few months.").

³⁵ See E-mail from Karen Hughes to Kent Lindsay, *et al.* (Sept. 15, 2010) (MEPCO_00000201) ("would you please send me a list of all the political contributions (both by check and credit card) you have made since the May primaries? I have been really really swamped over the past few days and haven't had a chance to tally for each of you.") (emphasis in original); E-mail from Eric Grimm to Karen Hughes (Sept. 18, 2010 3:22 pm) (MEPCO_00000111) (providing itemized list of contributions made from personal funds deposited into Grimm's personal account); E-mail from Karen Hughes to Brian Osborn (Mar. 28, 2012 2:16 pm), MEPCO_00000154-55 ("Please verify my records, but I show that you wrote checks for \$27,500 (including Manchin) which would be deducted from the \$28,000 net bonus.").

³⁶ See, e.g., Invitation to Fundraiser for Congressman Jason Altmire (MEPCO_00006783) ("Altmire Invitation"); E-mail from Suzanne Likins to Karen Hughes, *et al.* (Aug. 16, 2011, 12:56 pm) (MEPCO_00001498) (inviting MEPCO executives to fundraiser for Congressman Jason Altmire, hosted by Laurita and his spouse, Becky); E-mail from Suzanne Crane to Suzanne Crane, *et al.* (Mar. 26, 2013 08:17 am) (MEPCO_00004645-46) (inviting Mepco executives and other guests to fundraiser for U.S. Senate candidate Shelley Moore Capito, hosted by Laurita) ("Capito 2013 Invitation"); Invitation to Fundraiser for Congressman Mark Critz (MEPCO_00000089) ("Critz Invitation"); E-mail from Suzanne Likins to Suzanne Likins, *et al.* (Mar. 21, 2012 10:02 am) (MEPCO_00006026) (invitation to fundraiser for Senator Joe Manchin) ("Manchin 2012 Invitation"); Invitation to Fundraiser for Congressman David McKinley (MEPCO_00004015):

³⁷ See, e.g., Letter from Ron Clark, Purchasing Director, Mepco (June 21, 2010) (MEPCO_00003706) (inviting guests to fundraiser for U.S. House of Representatives candidate Mike Oliverio held at Mepco offices).

³⁸ See, e.g., E-mail from Suzanne Likins to James Laurita (Aug. 16, 2011 08:17 am) (MEPCO_00002581) (picking up campaign signs for fundraising event to be held at Laurita's residence); Capito 2013 Invitation, *supra*, n. 36; Manchin 2012 Invitation, *supra*, n. 36.

1 end of 2012. On December 10, 2012, Laurita sent Hughes an e-mail stating, "I am going to have
2 Suzanne send me my political donation total for the last few years, and have Mepco reimburse
3 me before year end to avoid tax increases" ³⁹ That same day, Crane informed Laurita that
4 the total for his "political" giving was \$258,875 and also provided him with a spreadsheet
5 itemizing his federal and state contributions from 2009-2012, where the federal contributions
6 totaled \$267,750. ⁴⁰ Laurita then forwarded that information to Hughes, and they agreed that
7 Mepco would reimburse him through payroll. ⁴¹ According to Mepco's payroll records, Laurita
8 was awarded a bonus of \$660,000 on December 28, 2010, which appears to include the funds
9 reimbursing him for his contributions. ⁴²

10 **C. Discovery of Reimbursement Program**

11 On August 30, 2013, Mepco and Longview filed petitions for Chapter 11 bankruptcy. In
12 the course of the restructuring process, Mepco's restructuring counsel, Kirkland and Ellis, LLP,
13 ("K&E") reviewed Mepco's books and records to prepare a filing in the Bankruptcy Court. ⁴³ On
14 September 26, 2013, counsel learned about a category of compensation for Mepco executives
15 called "other bonus," and when K&E inquired about this bonus category, Mepco's current Chief
16 Financial Officer responded that the category represented company funds used to reimburse (or
17 advance) executives for political contributions. ⁴⁴ The next day, K&E notified Longview's CEO,

³⁹ E-mail from James Laurita to Karen Hughes (Dec. 10, 2012, 07:29 am) (MEPCO_00000107).

⁴⁰ E-mail from Suzanne Likins to James Laurita (Dec. 10, 2012, 07:47 am) (MEPCO_00000077); E-mail from James Laurita to Karen Hughes (Dec. 11, 2012 4:15 am (MEPCO_00000012-13).

⁴¹ E-mail from James Laurita to Karen Hughes (Dec. 10, 2012, 08:36 am) (MEPCO_00000077).

⁴² See Mepco, LLC Payroll Records, James L. Laurita (Jan. 1, 2011-Dec. 31, 2013).

⁴³ Submission at 2.

⁴⁴ *Id.*

1 who authorized further investigation.⁴⁵ After the investigation, Laurita resigned as CEO and as a
2 Board member of Mepco on November 10, 2013.⁴⁶

3 III. LEGAL ANALYSIS

4 A. Contributions Made in the Name of Another

5 1. There is Reason to Believe that Mepco and Mepco, LLC Violated 52 6 U.S.C. § 30122 (formerly 2 U.S.C. § 441f)

7
8 The Act prohibits a person from making a contribution in the name of another or
9 knowingly permitting his or her name to be used to effect such a contribution.⁴⁷ The prohibition
10 extends to knowingly helping or assisting any person in making a contribution made in the name
11 of another.⁴⁸ The term "person" for purposes of the Act and Commission regulations includes
12 partnerships, corporations, and other organizations, including LLCs.⁴⁹

13 A principal is liable vicariously for the acts of its agent committed within the scope of
14 agency.⁵⁰ Here, based on the actions of its executives, Mepco admits that it reimbursed its
15 executives for making political contributions.⁵¹ Mepco used funds from its wholly owned
16 subsidiary, Mepco LLC, to compensate its executives for making contributions to federal
17 candidates and other political committees. Mepco therefore made contributions in the name of
18 another in violation of section 30122 (formerly section 441f). Further, by accepting
19 reimbursements for contributions they made to candidates and political committees and thus

⁴⁵ *Id.*

⁴⁶ *Id.* n.1.

⁴⁷ 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f); 11 C.F.R. § 110.4(b)(1)(i).

⁴⁸ 11 C.F.R. § 110.4(b)(1)(iii).

⁴⁹ See 52 U.S.C. § 30101(11) (formerly 2 U.S.C. § 431(11)); 11 C.F.R. § 100.10; Advisory Op. 2009-02 (True Patriot Network), at 3.

⁵⁰ RESTATEMENT (THIRD) OF AGENCY § 7.07; see also *United States v. Sun-Diamond Growers of Cal.*, 138 F.3d 961 (D.C. Cir. 1998) (affirming criminal convictions against corporation in connection with a contribution reimbursement scheme where officer hid the scheme from others in corporation but acted to benefit the corporation).

⁵¹ Submission at 1; Supp. Submission at 1.

4 serving as conduits in Mepco's reimbursement program, Mepco executives appeared to have
2 knowingly permitted their names to effect contributions made in the name of another in violation
3 of section 30122.

4 A violation of the Act is knowing and willful if the “acts were committed with full
5 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁵² This
6 does not require proving knowledge of the specific statute or regulation the respondent allegedly
7 violated.⁵³ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily and was
8 aware that his conduct was unlawful.”⁵⁴ This may be shown by circumstantial evidence from
9 which the respondents’ unlawful intent reasonably may be inferred.⁵⁵ For example, a person’s
10 awareness that an action is prohibited may be inferred from “the [person’s] elaborate scheme for
11 disguising their . . . political contributions.”⁵⁶

12 The record here indicates that the Laurita and the eight other Mepco executives —
13 Lindsay, Stecher, Osborn, Usery, O'Dell, Polce, Grimm, and Hughes — were aware of the
14 prohibitions and limits relating to political contributions prior to October 2013. On numerous

⁵² 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

³³ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

³⁴ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁵⁵ Cf. *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants' convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

³⁶ *Id.* at 214-15. As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 occasions, campaigns informed them about the rules for making campaign contributions.⁵⁷ For
2 example, on August 22, 2012, Laurita appears to have e-mailed to Grimm and Hughes an
3 invitation for a fundraiser hosted by Laurita, which stated, “[c]ontributions must be made from
4 your own funds, and funds cannot be provided to you by another person or entity for the purpose
5 of making this contribution.”⁵⁸ In June 2010, Hughes informed another Mepco colleague:
6 “Companies cannot donate to anything political, only individuals.”⁵⁹

7 Further, Hughes’s e-mail communications instruct other senior Mepco officers to destroy
8 e-mails stating that they would receive reimbursements for their contributions. In an e-mail to
9 six other Mepco executives, with a subject line entitled, “Manchin,” Hughes writes “You will be
10 receiving a \$1,000(net) bonus by direct deposit in the next few days. Please delete this email.”⁶⁰
11 In another e-mail, Hughes informs seven Mepco executives: “By the end of the day tomorrow
12 (Thursday), please provide your check in the amount of \$500 payable to ‘Capito for

⁵⁷ See, e.g., E-mail from Karen Hughes to Karen Hughes (Sept. 30, 2010 10:41 am) (MEPCO_00000191-192) (attaching contribution form from Spike Maynard for Congress, stating: “Please Confirm — This contribution is made from my own funds and will not be reimbursed by any other person or entity.”); E-mail from Suzanne Hammond, Snuffer U.S. Congress to Suzanne Likins, Mepco, LLC (Oct. 3, 2012 9:41 am) (MEPCO_00000225-227, at 226) (stating that the campaign could only accept contributions from individuals).

Laurita also appears to have been aware that Mepco and its subsidiaries could have each made contributions given that he inquired about the ability of LLCs to make contributions. See E-mail from Louis S. Southworth, Jackson Kelly PLLC to Bill Raney, West Virginia Coal Association and James Laurita (Aug. 10, 2010 11:05 am) (MEPCO_00000066). Nevertheless, neither Mepco nor any of its affiliates made any direct contributions to candidates; rather, Laurita appears to have continued his practice of requesting that executives make contributions in their own names, which would be reimbursed by Mepco. See Supp. Submission at 4 (indicating that as a general practice, Laurita requested that officers make contributions which were to be reimbursed).

⁵⁸ E-mail from James Laurita to Eric Grimm and Karen Hughes (Aug. 22, 2012 5:02 am) (MEPCO_000000119-121) (“In essence, I was only going to have Becky and I, and Your [sic] and Sheryl give to Critz (see attached). If you agree with that, Karen will take care of adjusting your account.”); see also Invitation to Fundraiser for Citizens for Altmire hosted by James and Rebecca Laurita (MEPCO_00004227) (“Contributions are limited to personal funds of \$2,500 per person . . .”).

⁵⁹ E-mail from Karen Hughes to Ron Clark (June 4, 2010 9:47 am) (MEPCO_00004005).

⁶⁰ E-mail from Karen Hughes to Kent Lindsay, *et al.* (Aug. 13, 2010 8:49 pm) (MEPCO_00000215).

1 Congress.”⁶¹ One minute later, she sends another e-mail with the subject line “Delete this e-
2 mail” to the same individuals and states, “I’ll reimburse you in the next couple days.”⁶²

3 Under these circumstances, the Commission finds reason to believe that Mepco Holdings,
4 LLC and Mepco LLC violated 52 U.S.C. § 30122 (formerly 2 U.S.C. § 441f).⁶³

5 **B. Contributions Exceeding the Limits of the Act**

6 1. There is Reason to Believe that Mepco and Mepco, LLC Violated 52
7 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a))
8

9 The Act provides that no person shall make contributions to any federal candidate and his
10 or her authorized political committee, which in the aggregate, exceed \$2,000.⁶⁴ Contribution
11 limits are indexed for inflation, and therefore, the limit for the 2010 election cycle was \$2,400
12 per election, and \$2,500 for the 2012 election cycle, and \$2,600 for the 2014 election cycle.⁶⁵

13 Commission regulations provide that an LLC may make contributions depending on how
14 it elects to be treated under the Internal Revenue Service (“IRS”) “check the box” rules.⁶⁶ An
15 LLC that elects to be treated as a partnership under IRS rules or does not elect to be treated as
16 either a corporation or a partnership may make a contribution and is subject to the contribution
17 limits that apply to partnerships at 11 C.F.R. § 110.1(e).⁶⁷ Contributions made by partnerships
18 are attributable both to the partnerships and to the partnerships according to the partnership

⁶¹ E-mail from Karen Hughes to Kent Lindsay, *et al.* (Sept. 8, 2010 12:07 pm) (MEPCO_00000212).

⁶² E-mail from Karen Hughes to Kent Lindsay, *et al.* (Sept. 8, 2010 12:08pm) (MEPCO_00000211).

⁶³ Although funds from Mepco LLC were used to make contributions, the Commission makes findings as to Mepco Holdings LLC as well given the companies’ close relationship, Mepco’s own admission, and past Commission precedent. In MUR 5849 (Bank of America), the Commission pursued the parent organization where parent organization filed the submission and admitted to the violations.

Further, the information presented above raises the question of whether Mepco acted with knowing and willful intent, and an investigation is necessary to resolve this issue.

⁶⁴ 52 U.S.C. § 30116(a)(1) (formerly 2 U.S.C. § 441a(a)(1)).

⁶⁵ See 11 C.F.R. §§ 110.1(b)(1)(i), 110.17(b).

⁶⁶ *Id.* § 110.1(g).

⁶⁷ See *id.* § 110.1(g)(2).

1 agreement or according to a formula set forth in Commission regulations.⁶⁸ In contrast, an LLC
2 that elects to be treated as a corporation by the IRS is treated as a corporation for contribution
3 purposes and is prohibited from making contributions.⁶⁹

4 Mepco, Longview, and their subsidiaries are LLCs, but neither Mepco, Longview
5 Holdings, nor Mepco, LLC are taxed as corporations under IRS rules. Thus, Commission
6 regulations treat them as partnerships, and their contributions are subject to 11 C.F.R. § 110.1(e).
7 As such, Mepco was limited to making a \$2,400 contribution to a federal candidate per election
8 during the 2010 cycle, \$2,500 contribution during the 2012 cycle, and \$2,600 contribution during
9 the 2014 cycle. The factual record indicates that Mepco made contributions that exceed these
10 limits when it reimbursed executives for making contributions to federal candidates. Typically,
11 Mepco made its contributions in the names of numerous, and sometimes all of its executives at
12 the same time, resulting in excessive contributions to federal candidates. For example,
13 Commission disclosure reports indicate that six Mepco executives and their spouses contributed
14 over \$34,000 to Capito for Senate for the 2014 primary election. Because these contributions
15 were likely reimbursed, Mepco appears to have made an excessive contribution in this instance.
16 Further, by using company resources in planning and holding fundraisers for candidates, Mepco
17 made additional in-kind contributions to the same candidates.

18 Mepco executives were advised of the Act's contribution limitations, invitations to
19 fundraisers generally contained information about maximum contribution levels, and executives
20 and their spouses also signed reattribution letters referencing their familiarity with Commission

⁶⁸ *Id.* § 110.1(e).

⁶⁹ *Id.* § 110.1(g)(3).

1 regulations relating to the treatment of excessive contributions.⁷⁰ Moreover, on one occasion,
2 Congressman David McKinley forwarded Laurita a copy of the Commission's Contribution
3 Limits Chart for 2011 to 2012.⁷¹ In an April 2012 e-mail to Laurita, Eric Grimm wrote, "I
4 believe I have sorted out the different times we have contributed to Altmire and Critz for the
5 2012 Primary starting in 2011. We are all pretty well maxed out on Critz and have some room
6 with Altmire."⁷²

7 Under these circumstances, the Commission finds reason to believe that Mepco Holdings,
8 LLC and Mepco, LLC violated 52 U.S.C. § 30116(a)(1) (formerly 2 U.S.C. § 441a(a)(1)) by
9 making excessive contributions.⁷³

⁷⁰ See, e.g., Letters from Steven Polce, Mepco, and Victoria Polce to Critz for Congress Committee (July 11, 2011) (MEPCO_00003792-3795) (requesting reattribution of contributions "[i]n accordance with FEC regulations").

⁷¹ E-mail from David B. McKinley to James Laurita (Feb. 24, 2011 5:20 pm) (MEPCO_00002869-870).

⁷² E-mail from Eric Grimm to James Laurita (Apr. 7, 2012) (MEPCO_00002278).

⁷³ The information presented above raises the question of whether Mepco made excessive contributions with knowing and willful intent, and an investigation is necessary to resolve this issue.